

OGC Has Reviewed

leg file
ole 74-2101
18 September 1974

MEMORANDUM FOR THE RECORD

SUBJECT: HR 16373 - Privacy Bill

STATINTL

1. [] OLC, asked me to review the 12 September draft of the subject bill which was favorably reported to the Full Committee on Government Operations. The bill generally requires that agencies inform the public of agency policy and practice concerning records maintenance and use. Agencies must make records available upon request to those individuals on whom such records are kept. Provisions of the bill may be enforced by civil suit.

2. The bill provides for a CIA exemption from most of its provisions in a novel way. Instead of exempting records maintained or originated by CIA outright, the bill provides, in effect, that the Director of Central Intelligence may do so:

(j) General Exemptions -- The head of any agency may promulgate rules in accordance with the requirements, including that of general notice, of section 553 of this title, to exempt any system of records from any part of this section except subsections (b) and (e)(2)(A) through (F) if such system of records is --

(1) maintained by the Central Intelligence Agency

The wording of this exemption poses a problem. The Director, in promulgating rules to exempt CIA records from the bill's disclosure provisions, would have to comply with 5 U.S.C. Sec. 553. This statute provides that general notice must be given of the "time, place, and nature of public rule making proceedings" and that "the

agency shall give interested persons an opportunity to participate in the rule making." Subsection 553(b)(3) provides that these procedures need not be followed in certain situations, one of which the Agency could arguably contend applies to the Director's rule making. However, since the bill's exemption states that rules may be promulgated "in accordance with the requirements of Sec. 553," it can be argued that the exemptions in Sec. 553 do not apply. In such a case, the Agency would have to hold a public hearing on its proposed rules and give interested parties an opportunity to be heard.

3. I made these comments orally to [redacted] in OLC.

STATINTL



Office of General Counsel

cc: OLC

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